

FEB - 6 1992

CERTIFIED-MAIL-RETURN-RECEIPT REQUESTED

Ms. Mary McPhillips
County Executive
Orange County Government Center
255-275 Main Street
Goshen, N.Y. 10924

Re: Unauthorized Discharge into Waters of the United States
Request for Information Pursuant to 33 U.S.C. Section
1318(a)

Dear Ms. McPhillips:

The United States Environmental Protection Agency (EPA) is currently investigating an apparent violation of Section 301 of the Clean Water Act (CWA), 33 U.S.C. Section 1311. The violation consists of the unauthorized discharge of fill material into waters of the United States (wetlands) in the Town of Goshen, Orange County, N.Y. The site is further located southwest of New York State Route 17M and west of the Wallkill River. Orange County, N.Y. owns the site. Based upon the information of the National Wetland Inventory Maps and a site visit conducted by the U.S. Army Corps of Engineers, we have determined that the site contained wetlands.

Section 301 of the CWA, 33 U.S.C. Section 1311, provides that: "Except as in compliance with ... Section 404 [33 U.S.C. Section 1344] and other Sections of the CWA ... the discharge into navigable waters of any pollutant by any person shall be unlawful."

The wetlands described above are "navigable waters" as defined by 33 U.S.C. Section 1362(7) and the fill material, consisting of earth, is a "pollutant" as defined by 33 U.S.C. Section 1362(6). Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of fill material into navigable waters.

Specifically, the purpose of this project was to place fill in the wetlands to expand the existing landfill. At the time of the discharge of fill material, consisting of the construction of the two new cells in the wetlands, and continuing to the completion of the project, no permit had been issued pursuant to Section 404 of the CWA authorizing the discharge of fill material into the wetlands identified above. Therefore, pursuant to Section 301, the unpermitted discharge of fill material into the wetlands appears to be unlawful.

Section 308(a) of the CWA, 33 U.S.C. Section 1318(a), provides that whenever required to carry out the objectives of the CWA, including determining whether any person is in violation of the CWA, the Administrator of the EPA shall require that person to provide such information as may reasonably be required to make that determination. Therefore, pursuant to the authority vested in the Administrator of the EPA, under Section 308(a) of the CWA, and which authority has been duly redelegated to the undersigned, it is hereby requested that within fifteen (15) calendar days of receipt of the request, Orange County Department of Public Works provide the information requested in the enclosure. Failure to respond to this information request may subject you to enforcement action pursuant to Section 309 of the Act, 33 U.S.C. Section 1319.

The information requested herein must be provided, notwithstanding its possible characterization as confidential information or trade secrets. Should you so request, however, any information (other than public information) which the Administrator of this Agency determines to constitute methods, processes, or other business information entitled to protection as trade secrets will be maintained as confidential or a trade secret. Request for confidential treatment must be made when the information is provided so that any information so identified will be accorded this protection by EPA.

Please respond to:

Audrey Moore
Marine & Wetlands Protection Branch
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278-0090

If you have any questions concerning this matter, please contact Audrey Moore at 212-264-5170.

Sincerely,

Richard L. Caspe, P.E.
Director
Water Management Division

Enclosure

bcc: Mario Del Vicario, MWPB
Charles Hoffmann, ORC

2WM-MWPB:AUDREY MOORE:1/31/92:A:LAND308:WETLANDS

ENCLOSURE

Orange County Department of Public Works is required to submit the following information:

1. The dates on which deposition of fill material occurred on the site;
2. The type, source, volume and area of fill material deposited;
3. The locations of the sites where fill material was deposited, including, to the extent known, a description of any wetlands which were present prior to the filling;
4. Names and addresses of all persons directly or indirectly responsible for placing the fill;
5. Copies of all correspondence with any local, state or federal agency pertaining to the placement, retention, or removal of fill material on this property;
6. Copies of all correspondence with any corporations, partnerships or individuals concerning the placement of fill or presence of wetlands on this property;
7. Your reasons for not obtaining a federal permit pursuant to Section 404 of the Clean Water Act prior to beginning work;
8. Current and future plans to fill remaining wetland areas on this property;
9. Copies of all permits and licenses issued for work on this property;
10. The details of any contractual relationship you had with Wehran Engineers to remove materials or assist in the survey of this site as identified in this letter;
11. Any other facts you deem pertinent to this investigation.